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Michael Eloo

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EXAMINER

DANIELS, MATTHEW J

ART UNIT

PAPER NUMBER

1732

DATE MAILED: 01/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/717,630

Applicant(s)

ELOO, MICHAEL

Examiner

Matthew J. Daniels

Art Unit

1732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 21 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 9-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 16 and 17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 8/30/04, 6/30/05.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Election/Restrictions*

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-8 and 16-17, drawn to a method for processing, classified in class 264, subclass 143.
  - II. Claims 9-15, drawn to a pelletizing apparatus, classified in class 425, subclass 68.
2. Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus can be used to practice another and materially different process, such as pelletizing of candy.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, recognized divergent subject matter, and because the search for Group II is not required for Group I, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with Mr. Jacobson on 19 December 2005 a provisional election was made **with** traverse to prosecute the invention of Group I, claims 1-8, 16, and 17. Affirmation of this election must be made by applicant in replying to this Office action. Claims 9-15 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

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5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

### *Claim Objections*

6. **Claims 1 and 17** are objected to because of the following informalities: the chemical name of the polymer processed in the claimed method should not be abbreviated to more clearly set forth the subject matter sought. Appropriate correction is required.

### *Double Patenting*

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thornton*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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7. **Claims 1, 2, 8, 16, and 17** are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over Claims 1, 5, 13, and 14 of copending Application No. 10/954,349 in view of Koreishi (USPN 5830981).

Claims 1, 16, and 17 of the instant application over Claims 1 and 13 of the '349 application

Claims 1 and 13 of the '349 application claim the same steps of extruding PET into an underwater pelletizer, transporting the pellets to a dryer system using a water stream and injecting a high velocity gas in order to enhance the speed into and out of the dryer, and retaining or maintaining enough heat to initiate crystallization, as sought in Claims 1, 16, and 17 of the instant application. The '349 application is different because it includes a vibrating unit or conveyor. However, vibrating sieves are common in the art and would have been prima facie obvious to the ordinary artisan for producing a desirable drying action. This aspect is taught by Koreishi (10:16-20). It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate the method of Koreishi into the instant application in order to provide preliminary dewatering before transferring the pellets to a subsequent drying step.

Claims 2 and 8 of the instant application over Claims 5 and 14 of the '349 application

Claim 8 of the instant application appears to be a substantial duplicate of Claim 5 of the '349 application, and would therefore have been prima facie obvious for the same reasons set forth above. Claim 2 of the instant application appears to be a substantial duplicate of Claim 14 of the '349 application, and would therefore have been prima facie obvious for the same reasons set forth above.

This is a provisional obviousness-type double patenting rejection.

8. **Claim 1, 16, 17** are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 19 of copending Application No. 10/954,349. Although the conflicting claims are not identical, they are not patentably distinct from each other for the following reasons:

Claims 1, 16, and 17 of the instant application over Claim 19 of the '349 application

Claim 19 of the '349 application claim the same steps of extruding PET into an underwater pelletizer, transporting the pellets to a dryer system using a water stream and injecting a high velocity gas in order to enhance the speed into and out of the dryer, as sought in Claims 1, 16, and 17 of the instant application. The '349 application is different because it includes regulating the speed of the pellets after injection. However, the Examiner submits that any step of drying, holding, or packaging the pellets, which would have been obvious to the ordinary artisan, would regulate the speed of the pellets to 0 m/sec, rendering the claimed subject matter of the '349 application *prima facie* obvious.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. **Claims 1, 3, 4, 7, 8, 16, and 17** are rejected under 35 U.S.C. 103(a) as being unpatentable over Balint (USPN 3544525) in view of Krchma (USPN 3988085). **As to Claim 1**, Balint teaches a method for processing PET polymers into pellets which comprises:

extruding strands of PET through a die plate into an underwater pelletizer (3:71-4:57);

cutting the strands into pellets in the pelletizer (4:50-55);

transporting the pellets out of the pelletizer to a dryer using a water stream (4:55-57), the pellets retaining sufficient heat to initiate crystallization of the polymer (5:57-6:60, 1:15-29, 2:6-12).

Balint is silent to the high velocity gas stream injected into the water stream to enhance the speed of the pellets. However, in this regard, Balint clearly suggests a high velocity stream (4:55-57) in order to minimize the contact time with the quench medium (2:7-12) so as to retain the maximum amount of heat possible (1:23), providing an average pellet temperature that does not drop below 130 degrees C (6:3-6). Krchma provides a high velocity gas stream injected into the water stream to enhance the speed of the pellets (6:25-37). It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate the method of Krchma into that of Balint in order to increase the velocity of the pellets (Krchma, 6:25-37),

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which Balint would clearly find desirable (4:55-57, 2:7-12, 1:23, 6:3-6). **As to Claims 3 and 4**, Balint clearly suggests the claimed temperatures by stating that the “average temperature of the pellets does not drop below” 130 degrees C (6:5-7). See also (6:21-34). **As to Claims 7 and 8**, Krchma clearly teaches pressurized air injected substantially in alignment with the stream (6:25-37 and Fig. 2, Item 33). **As to Claim 16**, Balint teaches a method for processing high-temperature crystallizing polymeric materials into pellets comprising:

- extruding a high-temperature crystallizing polymeric material into strands;
- water cooling and cutting the extruded strands into pellets; and
- transporting the pellets using a water stream with the pellets retaining sufficient heat to initiate crystallization of the polymeric material without the application of external heat.

Balint is silent to the high velocity gas and water stream. However, in this regard, Balint clearly suggests a high velocity stream (4:55-57) in order to minimize the contact time with the quench medium (2:7-12) so as to retain the maximum amount of heat possible (1:23), providing an average pellet temperature that does not drop below 130 degrees C (6:3-6). Krchma provides a high velocity gas stream injected into the water stream to enhance the speed of the pellets (6:25-37). It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate the method of Krchma into that of Balint in order to increase the velocity of the pellets (Krchma, 6:25-37), which Balint would clearly find desirable (4:55-57, 2:7-12, 1:23, 6:3-6). **As to Claim 17**, Balint teaches PET (3:39-40).

10. **Claim 2** is rejected under 35 U.S.C. 103(a) as being unpatentable over Balint (USPN 3544525) in view of Krchma (USPN 3988085), and further in view of Stouffer (USPN



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5633018). Balint and Krchma teach the subject matter of Claim 1 above under 35 USC 103(a).

**As to Claim 2**, Balint appears to be silent to the insulating container. However, Stouffer teaches this aspect (5:24-39). It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate the method of Stouffer into that of Balint and Krchma in order to eliminate unnecessary equipment and additional heating costs, which would have obviously been desirable. In particular, Stouffer teaches that length heat treatments and annealing steps add time and expense to the overall process (1:66-2:6).

11. **Claims 5 and 6** are rejected under 35 U.S.C. 103(a) as being unpatentable over Balint (USPN 3544525) in view of Krchma (USPN 3988085), and further in view of Hunke (USPN 4632752), Kando (USPN 5607700), and Mizuguchi (USPN 5895617). Balint and Krchma teach the subject matter of Claim 1 above under 35 USC 103(a). **As to Claims 5 and 6**, the claimed limitation appears to be drawn to an apparatus limitation which does not materially affect the result of the claimed process (See Applicant's specification, page 14 top), and therefore should not be given patentable weight.

However, in the alternative, Balint and Krchma are silent to a straight slurry line having an angle upwardly from vertical of 30 to 60 degrees, or 45 degrees.

Hunke teaches that the air current and the angle of the entrance into the dryer contribute to the drying effect (2:13-46 and Fig. 3).

Kando additionally teaches that one of ordinary skill provides an installation angle (2:25-31) in order to satisfy a keen demand for a pelletizing machine which is compact in size (1:44-46) and provides an efficient use of space (3:22-24).

Mizuguchi teaches that a dewatering device may be situated above pellet silos (4:7-23), which allows the pellets to fall down through classifiers naturally due to their own weight.

It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to provide an angled slurry line of an upward angle of 45 degrees in order to provide an efficient use of space, to allow the pellets to naturally fall down through classifiers, or to improve the drying effect. Therefore, it would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate the methods of Hunke, Kando, and Mizuguchi into that of Balint and Krchma in order to provide efficient use of space, natural classification by gravity, and efficient drying action.

### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew J. Daniels whose telephone number is (571) 272-2450. The examiner can normally be reached on Monday - Friday, 7:30 am - 5:30 pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Colaianni can be reached on (571) 272-1196. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MJD 1/17/06

*MSD*

  
**MICHAEL P. COLAIANNI**  
**SUPERVISORY PATENT EXAMINER**